



DRA

*Division of Ratepayer Advocates
California Public Utilities Commission*

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Dave Mehl, Manager
Energy Section
California Air Resources Board
1001 I Street
Sacramento, CA 95814

**RE: Comments of the Division of Ratepayer Advocates to Proposed Concept
Outline for ARB Regulation to Implement Executive Order S-21-09**

Dear Mr. Mehl;

Included herein are the preliminary comments of the Division of Ratepayer Advocates ("DRA"), an independent consumer advocacy division of the California Public Utilities Commission ("CPUC"), regarding the Proposed Concept Outline for the California Renewable Electricity Standard ("RES").

DRA acts as an independent voice for all state-regulated utility consumers in California. DRA's statutory mandate as outlined in Public Utilities Code Section 309.5 is to represent and advocate on behalf of electric, gas, water, and communications customers to obtain the lowest possible rate for utility service consistent with safe and reliable service levels. DRA's mission includes advocating for consumer and environmental protections in connection with utility service.

DRA supports the development of cost-effective renewable resources to meet the goal of achieving a statewide renewable energy mix of 33% by 2020. As you may know, DRA actively lobbied for the inclusion of ratepayer protections in Senate Bill 14 and Assembly Bill 64 that were recently approved by the Legislature but vetoed by the Governor. As further detailed below, DRA strongly believes that any regulations enacted pursuant to Executive Order S-21-09 must include cost transparency measures to inform policy makers of the financial impacts of implementing the regulations, as well as cost-control mechanisms. Cost-control mechanisms could include setting a market benchmark to

compare the price of renewable energy alternatives to conventional energy similar to those adopted in SB 14 and AB 64 or providing an “off-ramp” to allow regulated entities to slow down their implementation of new renewable energy sources if costs become excessive. DRA also supports use of tradable renewable energy credits (“RECs”). DRA supports allowing tradable REC contracts in the near-term to retain compliance flexibility as new renewable energy projects come on line within California, while recognizing that tradable RECs should not be the sole solution to meeting either an RES standard or the existing 20% Renewable Portfolio Standard (“RPS”) implemented by the CPUC.

Cost Containment

DRA recommends incorporating cost control mechanisms into the RES to mitigate the potential that the costs of meeting RES requirements impose an unexpected and excessive burden on ratepayers. Indeed, pursuant to AB 32 the legislature has directed ARB to design regulations in a manner that seeks to minimize costs and ensures that activities do not disproportionately impact low-income communities, and to consider the cost-effectiveness of any regulations.¹ Further, the RES must require periodic consideration of the cost effectiveness of regulations evaluated within the context of other strategies and emerging technologies, including energy efficiency and demand response programs.

DRA recommends including measures for increasing the transparency of renewable energy program costs similar to those required under the existing RPS program. For example, the CPUC prepares regular RPS Progress Reports that evaluate the direct and indirect costs associated with achieving California’s RPS goals. Similarly, the RES program should require periodic analyses of direct and indirect program costs. ARB can rely on the recent report of the Energy Division of the CPUC, the “33% RPS Implementation Analysis Preliminary Results”² to assess costs associated with achieving a 33% RES. DRA also recommends that in order to contain program implementation costs, ARB’s regulation should relieve retail sellers of the obligation to procure electricity generated by eligible renewable energy resources if the net annualized total cost for the resources already purchased exceeds 5 percent of the retail seller’s total system annual revenue requirement.

By incorporating such cost containment measures, the RES would balance the benefits of increasing California’s reliance on renewable energy with effective ways to protect ratepayers by (i) limiting the total costs borne by ratepayers and (ii) providing regular monitoring of the progress, impediments, energy and environmental benefits provided. This is especially important because the utility sector is responsible for a significant portion of California’s greenhouse gas emission reduction goals, due to the sector’s size

¹ See Health and Safety Code Sec. 38562(b).

² Energy Division 33% RPS Implementation Analysis Preliminary Results, June 2009, available on the CPUC’s website at <http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/33implementation.htm>

and emission levels. DRA expects RES program costs to be significant based on the CPUC's experience with the RPS, and all of the RES program costs will be borne by utility ratepayers.

Applicability of the Renewable Electricity Standard

DRA agrees that an independent RES regulation enacted by the Air Resources Board should complement—and be consistent with—the existing 20% RPS program in order to reduce overall compliance and administrative costs. For example, if renewable energy resources are awarded free carbon dioxide (“CO2”) emission permits under alternative regulatory schemes (such as a carbon cap and trade program), decisions regarding whether or not the CO2 reduction is counted as a renewable energy credit should be consistent between the RES regulation and RPS program. Further, the RES should enact consistent rules regarding possible double counting of renewable credits, which is prohibited under the RPS program pursuant to Public Utilities Code Sec. 399.16.

RES Eligible Resources

To enhance consistency between the RES and RPS programs, DRA supports ARB's proposal to retain eligibility under the RES for resources currently eligible under the RPS program.

Renewable Energy Credits

At present, tradable or unbundled RECs may not be used for RPS program compliance.³ Recent Assembly and Senate Bills (SB14 and AB 64), which were approved by the California Legislature but vetoed by the Governor, would have allowed some use of tradable RECs as part of an amended RPS compliance scheme. Additionally a pending Draft Proposed Decision by the CPUC would permit use of tradable RECs for RPS compliance for up to 5% of investor owned utilities' annual procurement targets.⁴

DRA supports the use of tradable RECs for compliance with an RES (or the RPS program) under certain conditions, including that they be cost effective compared to other compliance alternatives and come from certified renewable resources located within the Western Electricity Coordinating Council (“WECC”). Permitting cost-effective tradable RECs for RES compliance could alleviate high costs of in-state renewable development and help load serving entities (“LSEs”) make up for shortfalls in annual renewable

³ See Commission decision (D.)06-10-019, Finding of Fact No. 27, Conclusion of Law No. 21, Ordering Paragraph No. 23.

⁴ See Proposed Draft Decision Authorizing Use of Renewable Energy Credits for Compliance with the California Renewables Portfolio Standards, mailed Mar. 26, 2009 in Rulemaking (R.)06-02-012.

resource compliance targets. Short term REC contracts can also provide low-cost compliance options for load serving entities that are waiting for longer-term projects to gain regulatory approval or become operational.

RES Compliance

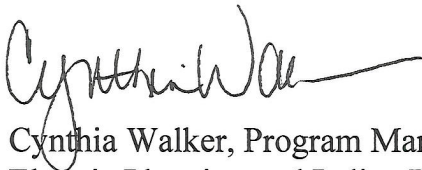
DRA supports ARB's proposal to link renewable procurement and greenhouse gas reduction together in the RES program design. Specifically, DRA supports the adoption of a compliance obligation measured as a MWh renewable procurement requirement, similar to the current RPS program. The RES standard should also incorporate flexible rules for compliance. The current RPS statute provides for flexible compliance over a three year period.⁵ DRA recommends establishing a 5 year flexible compliance horizon for meeting the 33% renewable energy standard.

Conclusion

DRA looks forward to working with the ARB to develop regulations that protect ratepayers from excessive costs while achieving California's renewable energy goals.

If you have any questions or would like to discuss this matter further, please call me at 415-703-1836 or Rahmon Momoh at (415) 703-1725.

Respectfully,



Cynthia Walker, Program Manager
Electric Planning and Policy Branch
Division of Ratepayer Advocates

cc: Gary Collord, ARB Energy Section

⁵ See Public Utilities Code Sec. 399.14(a)(2)(C).